

**ELECTIONS TO THE PUBLIC ACCOUNTS COMMITTEE.
THE STANDING FINANCE COMMITTEE, TO
THE AGRICULTURAL BOARD AND TO
THE P. W. D. ADVISORY COMMITTEE.**

PRESIDENT : The elections to the Public Accounts Committee, to the Standing Finance Committee to the Agricultural Board and to the P. W. D. Advisory Committee were conducted by the Deputy President and the following are the results:

Public Accounts Committee : Mr. M. G. Kesava Pillai got 39 votes and Mr. P. Narayana Pillai got 35 votes. These two honourable members are declared elected.

Standing Finance Committee : Mr. M. L. Janardana Pillai got 34 votes and Mr. Varkala K. Madhavan got 31 votes. These two honourable members are declared elected.

Board of Agriculture : Mr. T. Kochuthommen got 30 votes and he is declared elected.

P. W. D. Advisory Committee : Mr. M. L. D'Cruz got 29 votes, Mr. K. R. Narayanan 26 votes, Mr. M. Sivathanu Pillai 24 votes and Mr. Kannanthodath Janardanan Nair 23 votes. All of these four honourable members are declared elected.

**THE TRAVANCORE KRISHNANVAGA MARUMAKKA-
THAYEE BILL.**

MR. T. C. KESAVA PILLAI : Under Section 112 of the Legislative Rules I move that the Travancore Krishnanvaga Marumakkathayee Bill be taken up for consideration.

MR. M. G. KESAVA PILLAI : I second it.

MR. R. NILAKANTA PILLAI (Co-opted) : Sir, I support the Bill and wish to make the following few observations. Sir, the Marumakkathayam Section of the Krishnanvaga community is one of the minority communities of the State following the Marumakkathayam system of inheritance. I do not propose to discuss the principles of Marumakkathayam nor the evils that that system has spread upon the society. That the Marumakkathayam system is very antiquated and that it does not fit in with the present requirements of society are facts which are accepted beyond a doubt. And hence it is, Sir, that we find in all progressive communities a gradual conversion from the Marumakkathayam system to the Makkathayam.

Now, Sir, it is more than a decade since many of the major communities of the State who were for generations past, following the Marumakkathayam system of inheritance have got separate Regulations to govern their personal laws of marriage, inheritance, partition and the like. Sir, the customs and manners that are being observed by the Marumakkathayees of the Krishnanvaga community are practically the same as those prevalent among the Nairs and hence it is that the mover of the Bill thought it better to draw up a Bill on the lines of

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the Nair Regulation. Hence Sir, the Bill as it stands before this House for discussion is one which is practically a copy of the Nair Regulation with a few amendments here and there, rendered necessary, by the Judicial decisions and the practical difficulty experienced in the working of the Nair Regulation.

Sir, the various provisions of this Bill as it now stands before this House, have gone through a series of discussions in the other House of the Legislature and as a member of the community for the benefit of which this Bill is sought to be passed, I am of opinion that this Bill is the one and the only one that is best suitable for the welfare of the community. And, Sir, let me assure this House, that there is the hearty co-operation of all the educated members of the community and no less that of the other members also in seeing this Bill taking effect and finding its place in the Statute Book. Sir, with these observations I once again support the Bill that has been introduced into this House.

MR. M. SIVATHANU PILLAI: Sir, I wish to move at this stage that the consideration of the Bill be adjourned. I understand that this Krishnanvaga community has got a population of only 800 or at any rate that it is well within a thousand. In the constituency which I represent there are about a couple of hundred persons belonging to this community, and as a matter of fact, to be very frank, I do not know very much of the views of those persons in regard to this Bill. That is the only difficulty with me to participate in the discussion of this Bill.

PRESIDENT: Honourable members would no doubt have noticed that in order to meet the objections of those members of the community who stated that Government had committed a mistake in having nominated as persons especially qualified to deal with this matter men who did not belong to the Marumakkathayam group but only to the Makkathayam group, the honourable member who spoke last has been nominated; and he has expressed his view—presumably we must take his view as having been the result of a consultation with the other members of his community and I take it that I am justified in this belief. Mr. Nilakanta Pillai, are you in a position to speak for your community and have you consulted the other members of your community?

MR. R. NILAKANTA PILLAI: Yes, Sir.

MR. M. SIVATHANU PILLAI: Sir, it is far from me to dispute the position that has been assigned to the honourable member here. What I wish to submit is that in order that the House may be enabled to consider the Bill at this stage, sufficient information as to the peculiar customs in respect of marriage, devolution of property, etc., has got to be gathered by the members. I am only pleading my inability to offer any useful remarks on this Bill, especially when I have to consider the interest of the members of the community residing in my constituency

because of the simple reason that I have not got any information from them. If the House could do its duty without a correct and detailed information on the subject, I have no objection to the Bill being proceeded with. Hence it is, that I move the consideration of this Bill be adjourned.

MR. C. JEBAMONY NADAR : Sir, I also sail in the same boat as the honourable member Mr. Sivathanu Pillai.

PRESIDENT : Why should this boat be much in requisition? During all this period honourable members might well have documented themselves and got all the information they wanted.

MR. C. JEBAMONY NADAR : I am relying upon Rule 113 which says that when permission is sought for the consideration of the Bill, only the general discussion will proceed but not a detailed debate.

PRESIDENT : Why not honourable members make themselves fully qualified to enter upon the discussion?

MR. T. C. KESAVA PILLAI : Sir, I oppose the motion that the consideration of the Bill be adjourned. The honourable members who moved the adjournment motion and who supported it should feel shy at their ignorance, of the various stages of the Bill. The Bill came up before the Sri Chitra State Council and there it underwent ever so many operations. So far as the Krishnanvaga Marumakkathayam community inhabiting in my constituency and the principle of the Bill are concerned, the view of the community will thoroughly preclude the view of the individual honourable members. There was very great opposition even in the Sri Chitra State Council when a Makkathayee member was nominated. To overcome that difficulty Government have been pleased to sanction the nomination of a member of the Marumakkathayam community itself. He is an advocate of the Travancore High Court and an enlightened young gentleman and as such if the representatives coming from my constituency to speak for the adjournment of the consideration of the Bill, their act would be suspected.

PRESIDENT : No honourable member is entitled to suspect another honourable member.

MR. T. C. KESAVA PILLAI : It is not a reflection upon any particular individual. There is so much controversy in the matter because it is a question of partition in an undivided Marumakkathayam family. We have seen before the passing of the Nair Act ever so many civil, criminal, revenue and other cases going on between individual members and karanavans of the tarwads. Most probably some such thing might have come up for the abeyance of this Bill. Though the community number is only 800 or 1,200, the Bill is a sheer necessity and that community really feels the necessity for partition of their family property. They simply wanted to follow the Nair Act. In the State Council one member wanted to adopt the community into the Nanjinad Vellala community, another member wanted it to be taken in some other direction. The Marumakkathayam system that they follow is according

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to the system followed by Nairs, so much so that they fully support the principles of the present Bill which has not spontaneously come before this House. It has been carefully considered by the members of the State Council and it has been referred to a Select Committee. I could not express my surprise at the attitude of a member coming from my own constituency. Mr. Jebamony Nadar So, I emphatically oppose the motion for adjournment moved by Mr. Sivathanu Pillai.

MR. K. NARAYANAPERUMAL NADR : Sir, I fully endorse the view expressed by the honourable member Mr. T. C. Kesava Pillai and stoutly oppose the motion for adjournment moved by the honourable member Mr. Sivathanu Pillai.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Sir, I rise to a point of order. I wish to know from the Chair whether it is open to this House just at present to discuss the necessity for such a Bill, since the Bill has already been passed by the other Chamber. I wish to point out the attention of the Chair to Rule 40. According to that Rule the only objection that can be raised in the chamber appears to be one regarding the re-committal of the Bill to a select committee.

PRESIDENT : Order, order. There are certain general rules empowering every legislative and deliberative body to adjourn consideration of any matter which comes up before it in any form or shape. That is a rule which appertains to the dignity and what may be called self-sufficiency of every legislative or deliberative body. These are called ancillary or auxiliary rules. The right of every body to say that it shall consider or shall not consider any motion or that any matter shall be adjourned *sine die* or for definite period is an inherent right of procedure.

The question that the further consideration of the Bill might be adjourned was put to vote and declared lost.

The question that the Bill be considered in Assembly was then put and declared carried and the Bill was taken into consideration.

Clauses 1 and 2.

The question that clauses 1 and 2 do stand part of the Bill was put and carried and the clauses were added to the Bill.

Clause 3.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Sir, I move the following amendment :

PRESIDENT : Honourable members will no doubt notice that if any of these amendments are carried, it would mean considerable delay. That is a matter entirely for the honourable members to consider before moving the amendments.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Some of these amendments are very material. I move—

In clause 3 sub-clause (2) line 4: Between the words "force" and "or" insert the words "and subsisting on such date".

If my amendment is accepted, clause 3 (2) will read thus—

"Any male other than a Krishnanvaka Marumakkathayee with whom conjugal union is permitted according to recognised social custom and usage openly solemnised by the presentation of cloth to the female by the male whether so solemnised before the date on which this Act comes into force and subsisting on such date or so solemnised subsequent to that date shall be deemed to be a valid marriage for all legal purposes."

In order that a marriage solemnised before this Act comes into force should be deemed to be valid marriage, it must be subsisting on the date on which this Act comes into force. Sir, the question involved in this amendment is one of public policy. If this amendment is not accepted, the rights that have become already vested as a result of the longstanding custom in the community will be unsettled by the operation of the present clause. Sir, the Bill was drafted on the lines of the Travancore Nair Act, Act II of 1100 and with the exception of sub-clauses (b) and (c) of clause 39 all the provisions of the Bill are identical with the provisions of Act II of 1100. In the corresponding section in the Nair Act also we can see the words "and subsisting on such date." This is the provision in the Nair Act.

"Openly solemnised by the presentation of cloth to the female by the male whether so solemnised before the date on which Regulation I of 1088 came into force and subsisting on such date or so solemnised subsequent to that date, shall be deemed to be a valid marriage for all legal purposes."

Sir, the Ezhava Act, III of 1100, was also drafted and passed on the lines of the Nair Act. There, Section 5 reads thus:—

"The conjugal union of an Ezhava male, subject to the restrictions of consanguinity and affinity, with an Ezhava female openly solemnised by the presentation of cloth or by tying mangalya sutram, whether so solemnised before the date on which this Regulation comes into force and subsisting on such date or so solemnised after this Regulation comes into force shall be deemed to be a valid marriage for all legal purposes."

Sir, the amendment proposed is absolutely necessary when we consider the question on its merits also. If we do not insert the words "and subsisting on such date" also in the existing clause, a marriage dissolved 50 years ago either by the death of one of the parties to the marriage or by an order of dissolution passed by a competent court or by mutual agreement evidenced by a registered instrument will be deemed to be a valid marriage under the provisions of this Bill for all legal purposes. That will be very dangerous, Sir, because on the date when this Act comes into force, even though the marriage was once valid it should not be deemed to be a valid marriage if it was dissolved for any one of the reasons stated in the subsequent clause. Sir, I wish to know the opinion of the Legal Remembrancer on this point.

MR. K. KUNJU PANICKER : Sir, I second the amendment.

MR. T.C. KESAVA PILLAI : Sir, I oppose the amendment for the following reasons. According to the Nayar Regulation, there was a prior Regulation that of 1088. Therefore the expressions "subsisting on such date" was found necessary. In regard to the Krishnanvaka Marumakkathayee Bill, there is no prior Regulation existing at all. Secondly by the inclusion of those words, the scope of the Bill would be narrowed down. The clause reads —

"Any male other than a Krishnanvaka Marumakkathayee with whom conjugal union is permitted according to recognised social custom and usage, openly solemnised by the presentation of cloth to the female by the male, whether so solemnised before the date on which this act comes into force or so solemnised subsequent to that date, shall be deemed to be a valid marriage for all legal purposes."

My submission is that this Bill comes into operation from 1st Chingam 1115. Relations recognised by the community till 31st Adi 1114 has to be considered as valid. Suppose between the husband and wife there was a divorce or the marriage was dissolved either by death or otherwise, the issues do not take any property of the deceased. According to the provisions of this Bill, whether the marriage was subsisting or not, the children of the deceased or divorced parents could inherit the property, i. e., the children can inherit the property of the father. If the proposed amendment forms part of this clause, then the children cannot inherit the property of the father. The question of the legal transfer of the rights of the father will be affected by the suggested amendment to this section. That will cause some absurdity.

In the Nayar Act even according to the Act of 1088, there were certain provisions. So when the next Act came into force, the then existing provisions were copied out. There is no comparison between the Nayar Act and the Krishnanvaka Marumakkathayee Act or the Ezhava Act and the Krishnanvaka Marumakkathayee Act.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : What does the member say with regard to Section 5 of the Ezhava Act.

MR. T. C. KESAVA PILLAI : We do not deal with Ezhavas now. I therefore oppose the amendment moved by Mr. T. P. Velayudhan Pillai.

MR. PUTHUPALLI S. KRISHHA PILLAI : (*Legal Remembrancer*): Sir, one argument advanced by the mover of this amendment is that this Bill being drafted on the lines of the Nayar Bill should conform to the provisions of that Act in every detail. Apart from that position there does not appear to be any good reason why his amendment should be accepted. The argument advanced by the member was that if those words were not inserted in the Bill, it might appear that this Act confers some privilege on the parties to a marriage which was dissolved either by death of one of the parties or by divorce or dissolution by mutual consent. I will refer the honourable member to clause 44 of the Bill which provides.

"Nothing in this Act shall confer any rights on the parties to a marriage dissolved before this Act comes into force."

In the face of that clear expression, I think that it is not absolutely necessary that these two words should be inserted there. How a marriage is dissolved everybody knows. It is either by death or dissolution, or mutual agreement or divorce. These are some of the modes of terminating a marriage. Therefore, the absence of these two words would not create any difficulty in properly applying the provisions of this Bill. Again it will be found that this provision is mixed up with another important provision contained in this clause, i.e., sub-clause (b) of Clause 44. All that it says is, nothing in this Act shall confer any rights on the parties.....The intention is that this Act will not confer any benefit on the parties to the marriage. But the children or descendants of persons who were married before the Act came into force, will be entitled to succeed on intestacy to their father's estate, that is to say, their children become entitled to claim any of the rights conferred by this act.

MR. K. KUNJU PANICKER : May I know if this clause is not introduced will it not affect prejudicially against the vested interests of the Marumakkathayee heirs of the deceased man?

MR. PUTHUPALLI S. KRISHNA PILLAI : In accordance with the provisions of the Act, Chapter IV deals with intestate succession. An estate is opened up after the Act comes into force. That estate will be inherited by those who are under the provisions of the Act declared to be entitled to such estate. Amongst that class of people, children born of marriages which were celebrated before the Act came into force, but which were not subsisting on the date of the Act, will become entitled to it. That is the reason why those two words were omitted from this Bill. If it is the intention of the honourable members that children, born of union brought into existence before the Act came into force, should not be entitled to father's property even though that father dies after the passing of this enactment, it is better to indicate such a provision, when a consequential amendment will have to be made to clause 44. Suppose during the debate of this Bill, the mother dies. This Bill comes into force on the 1st Chingam 1115. Is it the honourable member's view that though the property become available for distribution after this date, the children should not become entitled to it? Then, for the sake of clearness, such a provision may be inserted. The section as it stands is in order. But if the members think that all the conditions which prevailed in the Nayar community in respect of validity of marriage should be imported to the Krishnanvaka Marumakkathayee Community also, then the provisions used in the Nayar Act may be copied out here also. My suggestion is that there is no necessity for that.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : May I know dead he is aware that such a provision, clause 44, is omitted in a union Nayar as well as the Ezhava Act?

MR. KRISHNA PILLAI : That is why I should be omitted is a mere two words occur in the other Acts, re of the

MR. N. RAMAKRISHNA PILLAI (*Vaikom cum Kottayam*): May I know whether the omission of the expression was deliberate or active?

MR. PUTHUPALLI S. KRISHNA PILLAI: On examination of the printed papers of the Select Committee it appears that these words did not occur in the original Bill. It was not considered necessary to put these words into the clause. On a discussion it was understood that the children, born or union which came to termination before the Act came into force would be entitled to property. Therefore the Select Committee and the other Chamber considered this Bill with reference to the existing provision contained in the Nayar Act of 1088, and 1100 and also the Ezhava Act and it was after a comparative study of these, they concluded that the existing provision would suffice. If the member is in a position to point out that there are inherent defects in that clause on account of the omission of those words, I can understand. I will then either accept his suggestion or oppose it. An argument built on the existence of a few words in other analogous statutes does not appear to be acceptable.

MR. E. SUBRAMONIA AIYAR: Sir, clause 3 (ii) of the Bill reads —

"The conjugal union of a Krishnanvaka Marumakkathayee female.....with any male other than a Krishnanvaka Marumakkathayee with whom conjugal union is permitted according to recognised social custom and usage, openly solemnised by the presentation of cloth to the female by the male....."

Now, the member's apprehension is that if these words were not introduced, certain results that the mover did not desire would follow. As I understand, the position is this; the children born by the union of marriage which might have ceased its existence either by divorce or other causes, may acquire rights to the property left behind after this Act has come into force. Apart from the question whether the Bill as it stands would indicate such result, the object of the mover seems to be that such consequences should not follow. That again involves a question of principle. I will illustrate my point. Just before the Act comes into force, a marumakkathayee husband divorces his wife immediately. Under the present law it may be done. A man who possesses property and who has produced a lot of children for some reason or other, divorces his wife immediately. After the Act has come into force, he may remain single or may marry and subsequently die. The question will naturally arise whether his first wife whom he had divorced for no fault of hers and the children who are begotten, should inherit anything whatsoever. In such a case I do not see why, after the Act has come into force, they should not inherit the property. In the case of non Krishnanvaka Marumakkathayee male — I put it — non Marumakkathayee Krishnanvaka male, I would draw the attention of the House to clause 21 of the Bill and scrutinise the said provision. So far as non-Marumakkathayee Krishnanvaka male is concerned, the Bill has made clear the position that the children must be subsisting if the property is to be inherited by the children of the first wife. If there is any doubt, it is with reference to marriages of actual Marumakkathayees, what is among them — children born of the union of non-Marumakkathayee and Marumakkathayee and

Marumakkathayee, ample provision has been made under clause 21 of the Bill regarding succession to property. As the learned Legal Remembrancer has pointed out there is also Section 44 which says —

“Nothing in this Act shall :

(a) affect the existing rules of Marumakkathayam law, custom, or usage except to the extent hereinbefore expressly provided for ; or

(b) confer any rights on the parties to a marriage dissolved before this Act comes into force ; or”

There need not be any apprehension that the surviving individual can exercise any right over the other party of the marriage.

Section 9 of the Act says—

“The wife and minor children, except married daughters under the guardianship of their husbands shall be entitled to be maintained by the husband or father as the case may be.”

So if a marriage is dissolved under Section 34 after the Act comes into force it is clear that the husband or the father shall not be entitled to the guardianship of minor children. What I desire to point out is this. The Bill has taken special care to see that certain rights which might be exercised by either party of the marriage after the marriage is dissolved should not be exercised by such a party.

I have one other observation to make. The conjugal union openly solemnised shall be deemed valid. So far I can understand. But a *conjugal union openly solemnised and subsisting on such date shall be valid*, does not seem to be a correct way of putting it. *Conjugal union* is not the marriage; and *subsisting on that day*—What is to subsist? I can understand subsisting marriages. If divided, that section would read, the conjugal union of two people celebrated in a particular way shall be a marriage. A further explanation may be added, if the House thinks so, that a marriage which does not subsist on the date of this Act is no marriage at all for the purpose of this Act. I can understand it. In point of form as well as point of substance, to me, it appears that, the defining of marriage, of conjugal union subsisting on a particular day is not quite correct. That Section is a defining section. What is a marriage under the present Act? A marriage is a conjugal union openly solemnised; the union is openly solemnised. The section goes further. It does not wish to prevent a union subsisting on a particular date. To me it appears that the intention of the mover is that a marriage which does not subsist on the date of the Act should not be deemed to be a marriage and that it is better to add a separate clause. With these observations I oppose the amendment.

MR. N. RAMAKRISHNA PILLAI; I oppose the motion. The expression “subsisting on such date,” has got a great legal value. Its retention would mean that if one of the parties to a marriage was dead before the date of the passing of the Act, the children of such union had no right to inherit. Only the children of a subsisting marriage will obtain such right if the expression subsisting on such date” is retained in the section. Whether that expression should remain or should be omitted is a matter which depends upon the desire of the

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community affected by this Act. If the community wants that the children of a marriage which had ceased to exist on the date of the Act should also get the right, then certainly the expression should be omitted. If on the other hand the intention of the community is to restrict the right of inheritance to the children of a marriage subsisting on the date of the Act, then the expression should be added. Therefore the question is whether the omission of the expression in this Bill was deliberate or accidental. I think the intention of the framer of the Act was not to retain the expression as in the other Regulations referred to. Whatever that be, the position has been made clear by the other provisions of the Act particularly by the provision pointed out by Mr. E. Subramonia Iyer.

"Nothing in this Act shall :

- (a) affect the existing rules of Marumakkathayam law, custom, or usage except to the extent hereinbefore expressly provided for ; or
- (b) confer any rights on the parties to a marriage dissolved before, this Act comes into force."

So it will be clear that the object of the Bill is to exclude from inheritance the offspring of a marriage which does not exist on the date of the Act.

The fact that this expression occurs in the Nayar and the Ezhava Acts is not a sufficient reason why it should be retained in this Bill also. I should think that it is even an improvement of these Acts in that its omission while validating prior marriages does not create new rights inconsistent with the scheme of the Act. I therefore oppose the motion

MR. K. G. KUNJUKRISHNA PILLAI (*Neyyattinkara cum Trivandrum*) : I oppose the amendment mainly on two grounds. The first ground, as has been stated by the honourable member, Mr. E. Subramonia Iyer, is that the Section is a defining section and to such a section to add the words "and subsisting on such date" is inappropriate. A marriage openly solemnised either before or after a particular date is a marriage. That is the first objection to this amendment.

The second objection, as has been pointed out by the learned legal Remembrancer is that a legal marriage before the date of the Act must get the benefit of this Act. It is not correct to say that a law shall be so framed that while recognising a marriage valid for certain purposes should allow certain diametrically opposite consequences to follow. My submission is that the omission of the words is deliberate and it is well founded in law and equity. On these grounds I oppose the amendment.

MR. E. SUBRAMONIA AIYAR : Does not Section 21 give protection ?

MR. K. G. KUNJUKRISHNA PILLAI : Yes, Sections 21 and 44 give the necessary protection.

The amendment was put to vote and declared lost.

MR. PUTHUPALLI S. KRISHNA PILLAI : Amendment numbers 2, 3 and 4 are due to misprint.

The first amendment is "In clause 3, Proviso, last line, substitute the words "by the party or parties concerned" for the words "as the party or parties concerned." The only change is the substitution of

the word "as" for the word "by." Printing mistakes are noted by the Select Committee in a separate list and sent on to the Press for incorporation. Sometimes they omit to note them. I am prepared to accept the same if the honourable member would only move them.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I am glad that the Legal Remembrancer is ready to accept the amendment. What I submit is that the wording was the same in the original bill, in the bill as revised by the Select Committee and in the bill as passed by the Council.

PRESIDENT: The Secretary will take more care in future that such misprint do not appear.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I move that in Clause 3, Proviso, last line, substitute the words "by the party or parties concerned" for the words "as the party or parties concerned."

MR. PUTHUPALLY S. KRISHNA PILLAI: Does not the amendment really amount to the substitution of the word "by" for the word "as"? I accept it. It is merely a clerical mistake.

The amendment was put to vote and carried.

The Clause as amended was put to vote and carried.

The Clause was added to the Bill.

Clauses 4 to 6.

The question that Clauses 4 to 6 do form part of the Bill was put to vote and carried.

The Clauses were added to the Bill.

Clause 7.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, I beg to move that in Clause 7, sub-clause (vii) substitute the word "co-respondent" for the word "co-respondents".

MR. K. KUNJU PANIKKAR: I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI: The latter 's' is unnecessary. I accept the amendment.

The amendment was put to vote and carried.

The question that Clause 7 do form part of the Bill was put to vote and carried.

The clause was added to the Bill.

Clauses 8 to 35.

The question that Clauses 8 to 35 do form part of the Bill was put to vote and carried.

The Clauses were added to the Bill.

Clause 36.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I move that in Clause 36, line 2, substitute the words "shall also" for the words "also shall".

MR. K. KUNJU PANIKKAR: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: I accept the amendment.
The amendment was put to vote and carried.

The question that Clause 36 do form part of the Bill was put to vote and carried.

The Clause was added to the Bill.

Clauses 37 and 38.

The question that Clauses 37 and 38 do form part of the Bill was put to vote and carried.

The Clauses were added to the Bill.

Clause 39.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I beg to move that in Clause 39, sub-clause (c), line 3, between the words "members" and "such" insert the words "and pays proper court fee on the market value of such share". I may be permitted to move amendments 5 and 6 together. If my amendment is accepted Clause 39, sub-clause (c) will read thus:

"If in any suit referred to in clause (a) any other member or group of members entitled to claim partition demands in writing a partition of the share due to such member or group of members, and pays proper court fee on the market value of such share".

We do not find these two sub-clauses (b) and (c) in Section 39 of the Travancore Nāyar Act, and I believe these 2 sub-clauses are embodied in the present bill as the result of a Fuller Bench Ruling of the Travancore High Court reported on page 778 of 10 T. L. T. Sir, my submission is that mere expression of the intention to divide made in a written statement filed by the defendant should not be sufficient for entitling him to get the share. That is to say the principle that is made applicable to a plaintiff must also be made applicable to the defendant. The plaintiff has to file a suit on payment of court fee on the value of his share and mere expression of his intention to divide without filing a suit, is not sufficient.

MR. E. P. VARUGHESE: What does the member say with regard to the defendant who is unable to pay?

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Of course the provisions in the Travancore Civil Procedure Code with regard to the suit filed in "forma pauperis" may be very well applied in the case such a defendant also as contemplated in Order XXXIII of the Travancore Civil Procedure Code or the provisions contained in Order XLIII of the Civil Procedure Code regarding the appeals in forma pauperis may be made applicable to such cases.

MR. PUTHUPALLI S. KRISHNA PILLAI: Suppose the plaintiff pays and the defendant is unable to pay and he has no other property than the one which is involved in the suit?

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: He can file a written statement or file a separate suit for partition in forma pauperis as provided for such persons in Order XXXIII and LXIII of the Travancore

Civil Procedure Code. I have no objection in regard to such provisions being made in the bill. My submission is that those who are able to pay court fees should not be given their share simply by filing a written statement expressing the intention to divide without paying court fee.

MR. K. KUNJU PANIKKAR : Sir, I second the motion.

MR. E. SUBRAMANYA AIYAR : Here again we have to see what exactly is contemplated in the bill. So far as those rulings are concerned, they were the results of a construction put upon the provision in the Nayar Act corresponding to Section 39 here. This is what the Section says :—

- (a) Until partition, no member of the tarwad shall be deemed to have a definite share in tarwad property liable to be seized in execution nor shall such member be deemed to have any alienable or heritable interest therein.
- (b) If a member or group of members entitled to claim partition under the foregoing provisions of this Chapter institute a suit for partition of the share due to such member or group of members such share shall be deemed to have become partitioned as from the date on which such suit is instituted.
- (c) If in any suit referred to in clause (b) any other member or group of members entitled to claim partition demands in writing a partition of the share due to such member or group of members, such share shall be deemed to have become partitioned as from the date on which such demand is made."

Cases came to the High Court and the words "until partition" in that Section was ruled by the High Court as not the date of actual partition but they said that it only meant the date of filing a suit for that partition by the plaintiff. This interpretation was set aside by another ruling of the High Court which was again further changed by a Full Bench and subsequently by a fuller or a fullest bench. There was again a vacillation of opinion and they adhered to what was said earlier. Therefore it can be seen that so far as the Nayar Act is concerned the provision has under-gone many changes and now it is thought that as soon as the notice was issued to be served on to the parties on the opposite side that date may be taken as the partition date for the purpose of this provision. Sir, I am not here to canvas the correctness of that dictum. But what I say is that when we intend to pass a legislation we must see that we pass it most clearly and unambiguously so that these little doubts should not arise. After giving a right to the share of the property of the Tarwad under Section 38 which says :—

"Any individual or Thavazhee mentioned in Sections 34 and 37 shall be entitled to so much of the tarwad properties as will fall to such individual or to the members of such Thavazhee as a whole if a division *per capita* were made among all the members of the tarwad at the time of partition."

[Mr. E. Subramonia Aiyar.]

Is it right or justifiable to give that privilege by the right hand and then to take it away by the left. Then you cannot have any credit at all until partition and your children will not hope to get those properties. And then you leave it to be dependant upon the will or wish of the large number of other persons. Even if files a suit for the partition of his share of the tarwad consisting of 15 members, unless and until every member of the tarwad has paid the court fees he will not be able to get his share and his children may also be deprived of it after his death. My question is, are we to wait for these valuable rights to bear fruition depending upon such conditions? Suppose there is an old Karnavan of a tarwad, say 75 years old. He wants his share of the property. He files a suit and makes a demand. Other members of the tarwad also do likewise. And in the meanwhile the old man croaks. Then there is an end of the matter. Whatever the Act might have said it is the duty of this House to make it clear and to see that such things do not arise. Why should we presume that the tarwad cannot disintegrate. I cannot understand that. Not only with reference to this community but with reference to Nayars, Ezhavas, Kehatriyas and every community which follows the Marumakkathayam law, the process of disintegration of their tarwad is going on space. I have been aware that there is the Muslim Act regarding this which makes disintegrating of tarwads impossible. But no Marumakkathayee Muslim is entitled get any share from partitions. There are Marumakkathayee Christians in Neyyattinkara and we have got the Krishnanvakai community here but they are very few in numbers.

So it is better to make the law precise in this respect. If the desire of the community is to have partition it is to be considered when the partition should be effected. It would have been much better to say that the partition can be effected when a person makes a demand for it on the Karnavan of the tarwad. Because the High Court have said that the court fees should be paid before getting a share and that the demand is not necessary it is not incumbent on this House to enact laws in the line of the ruling of the High Court. So far as legislation is concerned we are not to be influenced by their rulings. Our first consideration must be to promote the well-being of the community and that is the only question which this Legislature has to consider. Even though the court fees as was suggested here may be very little the plaintiff may file a suit for the partition of his tarwad. At the same time there is a provision in the Court Fees Act which says that in a suit for partition or account it is not obligatory to pay court fees at the initial stage. Finally then the power is given to the court to allot the share to any member who is a decree holder after payment of court fee is given. The Court Fee Act says that it is enough to pay court fees at the final stage. Therefore my submission is that the conditions as given in the provision is sufficiently restrictive and the court fees may be made to be paid at the final stage of the partition. So in my view there is no more to be added on to the clause.

MR. E. P. VARGHESE: Sir, I wish to make a few remarks on this amendment. Clauses (b) and (c) were added to the bill by the Select Committee. As they are they place both the plaintiff and the defendant on the same footing. But the amendment has made the provision unfair to the defendant. According to the amendment if the defendant wants a share he must pay court fees. But if the plaintiff wants his share of the property he need not pay any court fees forthwith. When we legislate with all our experience and the rulings of the High Court before us we must be fair to both the parties. If a person who wants a share appears as a plaintiff there is a provision in the Civil Procedure Code that he need not pay court fees, as Mr. E. Subramonia Aiyar pointed out till he applies for execution of the decree in the partition suit. Why should we make the position of the defendant different from that of the plaintiff who can sue in forma pauperes. The amendment makes it incumbent on the defendant to get a share of the property only after paying court fees for the same while the mere filing of a suit effects a partition in the case of the plaintiff. The clause as it is, places both the parties in the same position. In the case of the defendant when he files a written statement demanding his share there is partition as in the case of the plaintiff when he files the plaint. But by the amendment it is made different for the defendant. I think it is not fair and so it is better to leave the clauses as they are or introduce a similar amendment in clause (b) also.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I oppose the amendment. As was pointed out by some honourable members these two sub-clauses were inserted by the Select Committee for the reasons stated by them, namely, that though this bill is based on the provisions of the Nayar Act it was thought by the Committee that the Krishnanvaka community should be relieved of the inconveniences arising from an Act similar to the Nayar Act. The Section 39 of the Nayar Act is a Section which gave room for a very heated controversy when the Bill was under consideration in the Legislative Council. Some members thought that immediately the Act comes into force the members of the community who would either claim to become divided or were desirous of becoming divided might immediately become divided and that their creditors might rush in and force a sale of the properties to the detriment of the other members who do not want to become divided. This is what the Section says:

"Until partition no member of the tarwad shall be deemed to have a definite share in tarwad property."

But subsequent to the enactment it was found that such a clause would be detrimental to the members of the tarwad. Arguments were advanced on the exact scope of the word partition. It was argued that it must be partition by metes and bounds. And it was also argued that it means only legal partition. It led to various rulings of the High Court. A ruling came from a Single Bench, and another from the Division Bench, and a third from the Full Bench and yet a fourth from a Fuller Bench. The Fuller Bench ruling was more or less the same

[Mr. Puthupalli S. Krishna Pillai.]

as that of the Division Bench ruling. The ratio decidendi of the decision is supported on the principle of *stare decisis*. The Select Committee had the benefit of that ruling of the Fuller Bench. They did not want the community to be in the same position in which the Nayar stands at present in respect of this decision. Referring to the defendant's position it is said there in paragraph 13 as follows:

"The next point for consideration is whether in a suit for partition the defendants who by written statements claim their share may be treated as having become separate in interest from the other members." In paragraph 14 they said that *prima facie* in the case of defendants who file written statements claiming their share must be deemed to have become severed in interest from the date of the written statement. They relied on the observations of the Bombay High Court regarding payment of Court fee in such cases. But they never said that the defendant shall become divided only if he paid Court fee.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Paragraph 16 says "And in such cases the rule in Travancore is to call upon the defendant who claims a share to pay the necessary Court fee thereon before the Court passes a final decree allotting to him his share" Is it the opinion of our High Court or the Bombay High Court?

MR. PUTHUPALLI S. KRISHNA PILLAI: Paragraph 16 says that the Court is bound to separate his share. And in such cases the rule in Travancore is to call upon the member who claims a share to pay the necessary court fee before the Court passes the final decree allotting the share. My learned friend does not realise the significance of the expression *final decree* in partition. Severance in interest takes place long before the final decree. It inevitably happens by the preliminary decree. The Bill provides that it happens by the filing of the written statement. Under a final decree for partition, the properties are divided by metes and bounds and allotted to every one of the share holder. If you want to take proceedings for getting a final decree you must pay down the court fee. Divided status does not depend on the Court Fees Act.

PRESIDENT: The Council will now adjourn to meet again at 2.

The House adjourned for lunch at 1 and re-assembled at 2 P. M. with the Dewan-President in the Chair.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I was pointing out that the Fuller Bench decision referred to by the honourable member does not say that a defendant claiming his share of the property would be partitioning his property or would be deemed to have partitioned only on payment of the Court fee. The decision says, as in 1925, Madras Weekly Notes, 330, the Court will direct payment of court fee before the final decree is passed, i. e., before the property is allotted in species upon division by metes and bounds.

The Select Committee, and subsequently the other Chamber, did not want to involve this community in the difficulties which confront the Nayar community on account of the provision contained in Section 39. Therefore, they proposed these amendments. These amendments are calculated to carry out the rules already referred to and given in the Fuller Bench decision. But, at the same time, care has been taken not to strangle the rule with further restrictions and conditions. If, by the institution of a suit, the plaintiff will be deemed legally to have become divided, by a similar claim made in the written statement, the defendant also should be deemed to have become divided. The defendant, in other words, is also entitled to claim that his share is partitioned. The question of payment of court fee will come only at a later stage. It may be suggested that it is to the advantage of the Government if we provide that the court fee should be paid before he is deemed to have become partitioned. Among the Marumakkathayees, a large number of suits appear to be instituted in *forma pauperis*. All the properties of the plaintiff are the properties comprised in the suit. The Sirkar does not lose because, the suit is instituted in *forma pauperis*. When the final decree is passed, his properties will be liable. Here, if we adopt this principle that whenever he claims his share he becomes divided automatically; his share also becomes divided; then he cannot put in the plea that he is a pauper. In any case, the same privileges are given to the defendant as are available to the plaintiff. The High Court have interpreted Order 33 of the C. P. C. regarding in *forma pauperis* suit that the provision can be applied to the defendant setting up a claim before court. Therefore, the introduction of these words in clause (c) would only unnecessarily curtail the liberty and the right that the other Chamber has sought to give to the defendant in a suit. That which is available to the plaintiff must also be made available to the defendant and his share must be ascertained as on the date of the filing of the written statement just as it is treated in the case of the plaintiff by the institution. With these words, Sir, I oppose the amendment.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, the question relates to the payment of court fee. If the Sirkar is not very particular, I beg leave to withdraw the motion.

The motion, by leave, was withdrawn.

The question that clause 39 do stand part of the Bill was put to vote and carried.

Clause 39 was added to the Bill.

Clauses 40 to 44.

The question that clauses 40 to 44 stand part of the Bill was put to vote and carried.

Clauses 40 to 44 were added to the Bill.

Preamble and title.

The question that the preamble and the title stand part of the Bill was to put vote and carried.

The preamble and the title were added to the Bill.

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MR. T. C. KESAVA PILLAI: Sir, I beg to move that the Bill may be passed.

MR. M. G. KESAVA PILLAI: Sir, I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, there is no objection in passing the Bill.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, I rise to a point of order.

According to Rule 43 contained in Chapter 17, Page 39 of the Assembly Manual, I wish to know whether it would be a correct procedure to take up the third reading for the passing of the Bill.

MR. PUTHUPALLI S. KRISHNA PILLAI: There were two substantial amendments proposed. One was withdrawn and the other rejected. The other amendments are only verbal and the President can suspend the standing order.

PRESIDENT: The amendments are clerical in character. So, the question before the House is that the Bill be passed into law.

The question was put to vote and carried.

The Bill was passed.

THE TRAVANCORE CHILD MARRIAGE RESTRAINT BILL.

SRIMATI T. NARAYANI AMMA: Sir, I beg to move "in clause 11 substitute the word 'individual' for the word 'family', in line 2."

Sir, the amendment speaks for itself.

The clause as amended reads as follows :—

"Our Government may, by notification in the Government Gazette, exempt any individual in Travancore from the operation of this Act, on application made in that behalf within six months of the passing of this Act."

It is hardly necessary for me to speak at length on this. I need hardly point out that clause 11 will nullify the effect of the Bill when it is passed into law. The word 'family' is a wide one and if any family can be given exemption a large number of people can manage to be outside the purview of the law. Indeed, the inhabitants of a whole village can in some way or other claim to be connected to an exempted family with results which practically make the law null and void. I am emphatically of opinion, Sir, that to allow the act to be made a dead letter by the retention of such a clause will be a blot, a stain, on the fair name of this progressive State. If in exceptional cases exemptions are found necessary the purpose will be amply served by exempting the individuals concerned. But, why should, I ask, whole families be exempted from the provisions of this Act except it be with the express intention of defeating the object of the Bill? It will not be inappropriate. If I mention in this connection, that when Mr. B. Das's Bill